



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

April 30, 2003

Ms. J. Middlebrooks  
Assistant City Attorney  
Criminal Law & Police Division  
City of Dallas  
1400 South Lamar Street #300A  
Dallas, Texas 75215-1801

OR2003-2910

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 180314.

The City of Dallas (the "City") received a request for the following three categories of information:

1. A copy of the tape recording of the January 14 meeting of the Police Citizen Review Board [the "Board"].
2. Minutes of the citizen review board meeting going back to September 1999.
3. The contents of the citizen police review board member notebooks.

You assert the requested information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have reviewed the representative sample of information you submitted and we have considered the exceptions you claim.<sup>1</sup>

Initially, we note the submitted representative sample does not contain the requested tape recording or meeting minutes. Further, your brief makes no mention of either of these items.

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<sup>1</sup> We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

We assume the City has released this information to the requestor. However, if the City has not released this information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Next, section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). The submitted documents contain law enforcement records that indicate the named suspect is a juvenile who allegedly engaged in delinquent conduct that occurred after September 1, 1997. Based on a review of the information, we find no evidence that any of the exceptions in section 58.007 apply. Therefore, section 58.007(c) of the Family Code makes this information confidential. Thus, the City must withhold the submitted offense report under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Next, section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). However, an agency's policymaking functions do not encompass internal administrative or

personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5.

In this instance, you contend your office, during the course of rendering legal advice and recommendations to the Board, issued legal opinions in the form of the submitted memorandum.<sup>2</sup> Based on your arguments and our review of the memorandum, we agree some of the information reflects advice pertaining to the policymaking process of the Board with respect to its legal obligations. Therefore, the City may withhold the information we have marked under section 552.111 of the Government Code.

Lastly, you inform us in footnote two of your brief that the requested information includes a Dallas Police Department standard operating procedure regarding felony traffic stops. Further, you state this office previously ruled on this information in Open Records Letter No. 99-3454 (1999). However, you provide no indication as to whether the facts and circumstances have changed since the issuance of the prior ruling.<sup>3</sup> Therefore, if the facts and circumstances have not changed, then the City may withhold this information in accordance with Open Records Letter No. 99-3454. Otherwise, the City must release the responsive information pertaining to the procedure for felony traffic stops as you claim no other applicable exception.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.*

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<sup>2</sup> We note the City submitted one sample memorandum as the second memorandum is identical to the first one.

<sup>3</sup> The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

§ 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 180314

Enc: Submitted documents

c: Ms. Tanya Eiserer  
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(w/o enclosures)